

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5915 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

BIBIBEN SURESH EREWA

Appearance:

MS MEGHA JANI for appellant

MR MTM HAKIM for Respondent No.1,2,3 and 6.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 07/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. Admit.

2. Mr. MTM Hakim, learned counsel appears and waives service of notice of admission on behalf of the respondents No.1, 2, 3 and 6 - original claimants. So far as respondents No.4 and 5 are concerned, no relief is sought against them, and therefore, we have taken up this matter for final hearing at the instance of the learned counsel appearing for both the sides.

3. The appellant - New India Assurance Company Limited challenges the judgement and order dated May 7, 1999 recorded in M.A.C. Case No. 1707/96 by the M.A.C. Tribunal [Aux], Vadodara, by which the respondents No.1, 2, 3 and 6 [claimants] were awarded total compensation of Rs.9,34,060=00 together with interest at the rate of 12% per annum from the date of application till the amount is paid, with proportionate costs thereof.

4. On the day of alleged mishap, deceased Sureshbhai Vasudev was going on his scooter No.GJQ 908 from Baroda to Bharuch and when he reached on National Highway No.8, near Bamangam village, he tried to overtake a motor truck and in the process of overtaking it, motor truck No. GJ-4-T-916 came from behind and dashed with the scooter of the deceased as a result of which the deceased was thrown off the scooter and fell on the road and received serious bodily injuries and ultimately succumbed to the same.

5. The respondents No. 1, 2, 3 and 6 who are the original claimants had filed Claim Petition inter alia stating that the accident was the result of the rash and negligent act of driving on part of the driver of the motor truck No. GJ-4-T-916, and therefore, the driver being the tort-feasor was primarily liable and the owner thereof was also vicariously liable, and ultimately, the appellant insurance company was liable under the contract of indemnity. Putting forth the claim with respect to compensation, it was stated by the claimants that, at the relevant time, deceased was serving with J.N. Associates as an Engineer and was drawing monthly salary of Rs.7,500=00. He was hale and hearty and had no vices and as a result of the untimely demise of the deceased, the claimants had lost the only bread winner and suffered loss of dependency benefit to the tune of Rs.12 lakhs. Therefore, the claimants had claimed total compensation

of Rs.12 lakhs from the driver, owner and insurance company of the vehicle involved in the accident.

6. The petition was contested by the appellant by filing its written statement at exh.25 and denied the averments made in the petition, including the negligence attributed on the part of the driver of the motor truck involved in the accident as well as the amount of compensation claimed in the petition. It was specifically stated in its reply that the deceased himself was negligent in causing the accident and therefore, no negligence can ever be attributed to the driver of the truck. It was also denied that the deceased was employed with the J.N. Associates in the monthly salary of Rs.7,500=00 and lastly it was contended that the amount claimed was on higher side and excessive and it was, therefore, prayed to dismiss the petition.

7. The Tribunal, after recording the evidence and on appreciation thereof, held that the accident was the result of the rash and negligent act of driving on the part of the driver of the truck involved in the accident. The Tribunal also held that the deceased was employed as an Engineer in J.N. Associates and was drawing salary of Rs.6,200=00 per month, on the basis of oral evidence of Mr. Jakal Thomas, who was the concerned officer of J.N. Associates as well as exhs. 36 and 37 which were the salary certificates of the deceased. The Tribunal thereafter on the basis of guess work, surmises and conjectures determined the prospective income, which according to the Tribunal, was Rs.9,000=00, and thereafter, calculated the average prospective income at Rs.7,600=00 and after deducting Rs.2,533=00 as expenses of personal upkeep of the deceased, determined the net dependency benefit available to the family members of the deceased at Rs.5,067=00 and thereafter, applied 15 multiplier and calculated the future economic loss at Rs.9,12,000=00 and then added global amount of Rs.20,000=00 under the head of expectation of life and Rs.2,000=00 was awarded by way of obsequies ceremony expenses, and assessed the damages at Rs.9,34,060=00 and awarded the said amount. It is this award which is now impugned before us in this appeal.

8. Ms. Megha Jani, learned counsel for the appellant - insurance company contended that so far as the question of negligence is concerned, the insurance company is not challenging the said finding recorded by the Tribunal. However, she emphatically contended that the amount of compensation determined by the Tribunal is excessive and on higher side to the extent of

Rs.3,26,816=00 as the appeal is filed for the said amount. What was stressed by the learned counsel was that, without any basis or evidence, the Tribunal has assessed the income at Rs.6,200=00 even though there is a discrepancy in exh.36 and 37 as according to the exh.37, deceased was getting the salary at Rs.4,268=00, whereas according to exh.36, deceased was getting the salary of Rs.6,218=00. It was pointed out by the learned counsel that the employer of the deceased had taken group insurance policy for all the employees working under it and as per that policy, deceased was paid Rs.70,000=00 and according to the learned counsel, that amount ought to have been deducted by the Tribunal. In support of her said contention, she placed reliance on the judgement of the Supreme Court in case of Helen C. Rebello and others v. Maharashtra State Road Transport corporation and another, reported in 1999 ACJ 10. She, therefore, urged that the amount of compensation determined by the Tribunal is on higher side and as the amount of Rs.70,000=00 is not deducted, the impugned award is required to be sliced down to that extent and accordingly modified award may be passed.

9. Mr.Hakim, learned counsel appearing for the claimants supported the impugned award throughout on all counts and according to him, the Tribunal had assessed the just and correct figure of the dependency benefit available to the family members of the deceased. On the contrary, deceased started his service in a salary of Rs.800=00 per month and within a span of 15 years, he has reached at the salary of Rs.6,218=00 and looking to the inflationary trend, and when the value of the money is eroded and still, there were more than 20 years ahead of him for serving, he would have not only reached the salary of Rs.9,000=00, but would have reached even above it. So far as not deducting the amount of Rs.70,000=00 is concerned, he contended that the group insurance was taken by the employer and it was a separate contract, and therefore, the Tribunal has rightly not deducted the said amount. Lastly, he urged that the impugned award is just and reasonable, requiring no interference, and therefore, this appeal may be dismissed.

10. We have considered the submissions made by the learned counsel appearing for the parties and the evidence including documents forming part of the petition.

11. The alleged mishap had taken place on August 21, 1996 when deceased was going on his scooter from Baroda to Bharuch on the National Highway No.8. When he reached

near Bamangam village and while overtaking a truck, the truck involved in the accident dashed the deceased from behind. As a result of the said accident, the life of the deceased was cut short at the cruel hands of providence. In order to prove the negligence on the part of the driver of the offending truck, Vaman Skuter Nayar who had occupied the pillion seat of the scooter and happened to be the eye witness was examined and on the basis of his oral testimony corroborated by FIR and Panchnama, the Tribunal had come to the conclusion that the driver of the offending truck was negligent in causing the accident. Therefore, the finding arrived at by the Tribunal so far as the negligence attributed to the driver of the offending truck is concerned, Ms. Jani in her arguments has rightly not challenged the same.

12. Now, so far as the amount of compensation determined is concerned, the claimant Liliben was examined at exh.33. She inter alia testified that her husband was getting Rs.6,288=00 per month by way of salary. She had also testified that if deceased would not have met with this unfortunate accident, he would have reached by now at least to Rs.9,000=00 per month by way of salary. It may be noted that the claimant Liliben withstood the test of cross-examination on the aspect of the income of the deceased. To corroborate the said version, the claimant had also examined Mr. Jakal Thomas at exh.35, who was working as Electrical Computer in J.N. Associates. He in his deposition testified that, in the year 1996, deceased was getting Rs.6,268=00 per month as salary. He had also produced exh.36 and 37 which were the salary certificates. He also tried to justify that there was no discrepancy in both the certificates and he gave satisfactorily explanation in this regard. According to him, as per exh.36, deceased was getting monthly salary of Rs.6,218=00, whereas as per exh.37, which is a register, deceased was getting net salary of Rs.4,268=00 after making the deductions under various heads like provident fund, income tax etc. So far as the amount of Rs.70,000=00 is concerned, he has admitted that it was paid to the family members of the deceased under the Workmen Compensation Act as the group insurance policy was taken by the Company. During his cross examination, he withstood the test of cross-examination satisfactorily and nothing substantial had been brought out from his deposition, which could remotely suggest that the deceased was not getting the salary, as claimed by the claimants and reflected in the exh.36.

13. On true analysis of the aforesaid evidence, we are fully satisfied that the deceased at the

relevant time was getting Rs.6,218=00 per month by way of salary, and the Tribunal was also justified in applying the formula as enunciated by the Supreme Court in case of Smt. Sarla Dixit v. Balwant Yadav, reported in AIR 1996 SC 1274, to find out average prospective salary of the deceased and, therefore, the Tribunal has rightly assessed the average prospective income of the deceased at Rs.7,600=00, and thereafter, deducted 1/3rd amount i.e. Rs.2,533=00 by way of personal upkeep of the deceased, and then, determined the compensation under the head of future economic loss at Rs.9,12,060=00, and then added Rs.20,000=00 under the head of expectation of life, and Rs.2,000=00 under the head of obsequious ceremony expenses, and had worked out the total compensation of Rs.9,34,060=00 which, according to us, is neither an excessive amount nor on higher side warranting our interference in the assessment of dependency benefits available to the claimants.

14. In Ashwani Kumar Mishra v. P. Muniam Babu and others (1999) 4 SCC 22, the Supreme court has laid down the criteria for awarding compensation wherein it was held that some guesswork, some hypothetical consideration and some amount of sympathy linked with the nature of the disability caused are all involved. But all such elements are required to be viewed with objective standards. Applying the said principle to the facts to the present case it cannot be said that the above mentioned elements are not viewed with objective standards by the Tribunal.

15. In Nagappa v. New India Assurance Company, (1998) 9 SCC 271, the Supreme Court has held that interference in appeal is permissible only in case the award is inadequate or too excessive. Applying the principle laid down by the Supreme Court to the instant case, by no stretch of imagination it can be said that the amount of compensation awarded to the heirs and legal representatives of the deceased is excessive requiring interference by this court.

16. Seen in the above context, we are fully satisfied with the finding arrived at by the Tribunal with regard to the quantification of compensation payable to the claimants and we do not find any valid and justifiable ground to disturb the amount of compensation worked out by the Tribunal.

17. Now, that takes us to the last contention canvassed by Ms. Jani with respect to not deducting the

amount of Rs.70,000=00, which was already paid by the insurance company under the policy of Workmen Compensation Act.

18. In this connection, we have perused the original policy exh.41 and on having perusal of the same, we are fully satisfied that the amount was paid for the liability of the employer under the Workmen Compensation Act, and Mr. Hakim, learned counsel for the claimants is unable to point out that premium was paid by the deceased himself. Therefore, there is every reason to believe that the premium was paid by the employer. In this connection, Ms. Jani, learned counsel for the appellant has rightly relied upon the judgement of the Supreme Court in case of Helen C. Rebello [supra], wherein in para 35, the Supreme Court has held that, "where the employer insures his employee, as against injury or death arising out of an accident, any amount received (sic) out of such insurance on the happening of such incidence may be an amount liable for deduction." In para 36 of the said judgment, the Supreme Court has further held that "this is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This, it is excluded thus, either through the wisdom of the legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here in both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution."

19. In view of the policy exh.41, at the risk of repetition, be it noted that the premium was paid by the employer under the group insurance policy under the Workmen Compensation Act for taking the insurance of all the employees and the amount of liability is also fixed at Rs.70,000=00 for each employee and since the law is settled by the Supreme Court in Helen C. Rebello (supra), we are of the opinion that the amount of Rs.70,000=00 ought to have been deducted by the Tribunal and to that extent, the impugned award is required to be modified by slicing down that amount from it. Therefore, we are deducting Rs.70,000=00 from the amount of Rs.9,34,060=00 worked out by the Tribunal by way of compensation and in doing so, the net compensation awardable to the claimants would come to Rs.8,64,060=00,

and, therefore, the claimants are now entitled to get the said amount as compensation.

20. For the foregoing reasons, the appeal succeeds in part and accordingly, it is partly allowed. The impugned award is modified accordingly, and it is held that the claimants are entitled to recover Rs.8,64,060=00 together with interest at the rate of 12% per annum and costs thereon as per the impugned award. There shall be no orders as to costs of this appeal.

[R.K.ABICHANDANI, J.]

[A.M.KAPADIA, J.]
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